84-171

No. -

In the Supreme Court of the United States

OCTOBER TERM, 1984

MANUEL KRAMER
PETITIONER,

v.

HON. JOSEPH S. MITCHELL et al.,
RESPONDENTS,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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I.

Questions Presented for Review

1. Is *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923) precedent for the Court of Appeals to affirm the District Court's dismissal of the petitioner's *original* complaint for declaratory and equitable relief?
2. Should the District Court retain jurisdiction over an action, never heard by a trier of facts, alleging willful violation of the due process and equal protection clauses of the Fourteenth Amendment?
3. Does 28 U.S.C. §636(b) and (c) permit a U.S. Magistrate to exercise civil jurisdiction and deny petitioner's request for entry of default which was automatically referred by the clerk of the District Court as a "discovery motion"?

ATTENDANT UPON THESE ISSUES ARE THE FOLLOWING:

4. Does the doctrine of *judicial immunity* protect judges of the Commonwealth of Massachusetts against actions for declaratory and equitable relief?
5. Can an attorney of the Commonwealth of Massachusetts enjoy *absolute privilege* against actions for abuse of process?
6. Can the courts of the Commonwealth of Massachusetts deny a citizen of ordinary intelligence the right to self representation?

List of All Parties

The petitioner herein is Manuel Kramer. The respondents herein are Honorable Joseph S. Mitchell, Honorable Allan M. Hale, Honorable Donald R. Grant, and Honorable Frederick L. Brown.

Interested parties are Honorable Edward M. Ginsburg and Attorney George P. Field.

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In the
Supreme Court of the United States

OCTOBER TERM, 1984

No. -

MANUEL KRAMER
PETITIONER,

v.

HON. JOSEPH S. MITCHELL et al.,
RESPONDENTS,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner, Manuel Kramer, *pro se*, respectfully requests that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered on May 23, 1984.

Opinion Below

The opinion of the Court of Appeals for the First Circuit has not been published in official reports. A copy of the opinion is attached hereto as Appendix A (A-1). The opinion of the United States District Court for the District of Massachusetts has not been published in official reports. A copy of the opinion is attached hereto as Appendix B (A-4).

Jurisdiction

Jurisdiction is conferred upon this Court by 28 U.S.C. §1254(1) to review a judgment of the Court of Appeals by Writ of Certiorari.

Constitutional Provisions

The following provisions of the United States Constitution are involved: U.S. Const. Article VI, para. 2 and Amendments IX and XIV §1. The text of those provisions are set forth in Appendix C (A-7).

Statement of Case

A. Statement of Prior Events

In August 1981, Mr. Kramer, *pro se*, filed a complaint pursuant to Mass. Gen. Laws, ch. 12, §11*I*. (A-10) in the Middlesex Superior Court against the Honorable Edward M. Ginsburg, Associate Justice of the Middlesex Family Court, and Attorney George P. Field of Boston. Mr. Kramer alleged that the defendants attempted to and did, in fact, interfere with his rights as secured by the rules, laws, and constitution of the Commonwealth.

Specifically, Mr. Kramer alleged (and supported his allegations with transcripts of proceedings) that Judge Ginsburg interfered with his procedural and substantive rights by:

a.) denying him right to be heard,
b.) denying him rights to discovery,
c.) denying him right to appear *pro se* as a defendant; and,
d.) invidious discrimination when Mr. Kramer asserted his right to appear *pro se* as a plaintiff by denying him the benefits of a *Meeting of Counsel* that Judge Ginsburg had previously ordered.

Mr. Kramer also alleged that Attorney Field had interfered with his rights by, *inter alia*, counseling and assisting his client in:

a.) failing to appear at her deposition after being properly served with a subpoena *duces tecum*; and
b.) disregarding an *Order of Compliance with Pre-Trial Notice to Counsel* that Judge Ginsburg had ordered.

In September 1981, Mr. Kramer amended his complaint to include "declaratory relief" in addition to "other appropriate equitable relief" as provided for in Mass. Gen. Laws, ch. 12, §11*I*.

Both defendants moved to dismiss for failure to state a claim upon which relief can be granted. Judge Ginsburg based the legal sufficiency of his arguments on the doctrine of *judicial immunity*. Attorney Field based his argument on his contention that, in representing his client, he had *absolute privilege* against actions for abuse of process.

After a hearing before the Honorable Joseph S. Mitchell, Associate Justice of the Middlesex Superior Court, Mr. Kramer's complaint against both defendants was dismissed pursuant to Rule 12(b)(6).

On October 19, 1981, Mr. Kramer moved for finding of facts and conclusions of law and was denied at the hearing by Judge Mitchell. On October 20, 1981, judgment to dismiss was entered.

Mr. Kramer appealed to the Massachusetts Appeals Court. On August 8, 1982 the Appeals Court, without oral arguments, entered the following order as a summary judgment:

> Judgment affirmed with double costs.
> By the Court (Hale, C.J., Grant & Brown JJ.)

In November 1982 the Massachusetts Supreme Judicial Court denied *Further Appellate Review*.

B. STATEMENT OF CASE AT BAR

On November 19, 1982, Mr. Kramer, *pro se*, filed an *original* complaint in the U.S. District Court for the District of Massachusetts against Honorable Joseph S. Mitchell, Associate Justice of the Middlesex Superior Court; Honorable Allan M. Hale, Chief Justice of the Massachusetts Appeals Court; Honorable Donald R. Grant, Associate Justice of the Massachusetts Appeals Court; and Honorable Frederick L. Brown, Associate Justice of the Massachusetts Appeals Court. The complaint, an action for declaratory and equitable relief pursuant to 28 U.S.C. §2201 and 42 U.S.C. §1983, §1985(3), and §1986, was brought by Mr. Kramer on his own behalf for the protection of his rights under Amend, IX and the due process and equal protection clauses of Amend. XIV of the Constitution.

28 U.S.C. §1331 and §1343(a) were invoked for jurisdiction of the District Court.

The complaint sought a declaratory judgment to declare that the dismissal of his *pro se* state civil rights complaint and the affirmation of said dismissal was based on invidious discrimination and insidious denial of due process because Mr. Kramer was *pro se*; that it deprived Mr. Kramer of his substantive right to redress his grievances in conformance with the laws of the Commonwealth; that it was done to protect and cover up unconstitutional and oppressive practices by officers of the courts; and that said dismissal was therefore null and void. As equitable relief, the complaint sought to have the U.S. District Court assume the jurisdiction of his state civil rights complaint or, in the alternative, remand it to the Middlesex Superior Court for a jury trial on the merits.

It should be noted, with emphasis, that the instant action is *not* an action against either of the defendants in Mr. Kramer's state civil rights complaint; *nor* is it an action to review a judgment concerning any of the issues stated under *Statement of Prior Events, supra*.

The specific claims made in the complaint are set out verbatim, as follows:

> The plaintiff, Kramer, makes the following claims against the defendants:
>
> COUNT 1. Defendant Judge Mitchell knowingly, willfully, and without a basis in law, dismissed Kramer's complaint because Kramer appeared *pro se*, thereby depriving Kramer of his substantive right to redress his grievances in conformance with the laws of the Commonwealth.
>
> COUNT 2. Defendant Judge Mitchell's ruling in COUNT 1., *supra*, was made with the intent to impede, discourage, and otherwise deprive a *pro se* citizen of his rights to bring civil rights action against a judge and other officers of the courts of the Commonwealth; and to protect and cover up unconstitutional practices and acts by officers of the courts of the Commonwealth.
>
> COUNT 3. Defendant Judge Mitchell allowed Field, in his 12(b)(6) motion, to include matters outside Kramer's complaint and did not exclude them; nor did he treat Field's motion as one for summary judgment as required by MRCP, and thereby knowingly deprived Kramer of his substantive rights to an evidentiary hearing.
>
> COUNT 4. Defendant Judge Mitchell denied Kramer's motion for Finding of Facts and Conclusions of Law, contrary to MRCP Rules 52(a) and 41(b)(2) & (3), because *there is no basis in law to support his judgment* to dismiss Kramer's complaint.
>
> COUNT 5. Defendant Judge Mitchell had been given full knowledge, in Kramer's complaint, of a potential covert conspiracy to abridge Kramer's due process rights in the Middlesex Family Court. His neglect and refusal to aid in

preventing the commission of the alleged conspiracy, by refusing to issue a preliminary injunction, is in violation of 42 U.S.C. §1986.[1]

COUNT 6. On July 27, 1981, defendant Justice Grant, in A.C. 81-0229-CV, denied Kramer's petition to allow his attorney to withdraw, thereby depriving Kramer of his substantive right to appear *pro se* as permitted by both MRCP and FRCP.

COUNT 7. Defendants Justice Hale, Justice Grant, and Justice Brown knowingly, willfully, and without a basis in law, affirmed Judge Mitchell's Judgment to Dismiss, thereby further depriving Kramer of his substantive right to redress his grievances in conformance with the laws of the Commonwealth.

COUNT 8. Defendants Justice Hale, Justice Grant, and Justice Brown entered into a covert conspiracy to protect and cover up the invidious discrimination by Judge Mitchell and the other discriminatory and oppressive practices, as set out *supra*, by officers of the courts.

COUNT 9. Defendants Justice Hale, Justice Grant, and Justice Brown allowed Field the privilege, not allowed to all litigants, to expand the record on review without leave of court.

COUNT 10. Defendants Justice Hale, Justice Grant, and Justice Brown did not write an opinion in their rescript because *there is no basis in law to support their ruling.*

---

[1] This should read §1985. 28 U.S.C. §1343(a)(2) confers original jurisdiction upon the district courts "to recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent."

COUNT 11. Defendants Justice Hale, Justice Grant, and Justice Brown ordered "double costs" against Kramer in order to:

a.) tax him financially to impede his ability to seek further redress of his grievances;
b.) chill, intimidate, and otherwise interfere with Kramer's ability to obtain relief;
c.) influence the Supreme Judicial Court in the event that Kramer sought further appellate review;
d.) issue a warning to *pro se* litigants in the courts of the Commonwealth that challenging the legitimacy of judicial proceedings or challenging abusive practices of attorneys will not be tolerated.

On December 23, 1983, after Justices Hale, Grant, and Brown failed to serve and file a timely responsive pleading, Mr. Kramer filed a request for entry of default with the clerk of the District Court. On December 30, 1983, the defendant Justices filed an *Opposition to Plaintiff's Request for Entry of Default* in which they stated: "that Counsel was engaged in other matters and failed to fill [sic] a responsive pleading through inadvertence." In addition, the defendants, *without leave of court to file late*, filed a *Motion to Dismiss* pursuant to Rule 12(b)(1) & (6), *late*.

Mr. Kramer moved to strike the defendants' *Opposition Request for Entry of Default* and their *Motion to Dismiss*; and, he also filed a timely *Opposition to Defendants' Motion to Dismiss*.

On April 13, 1983, Mr. Kramer was notified by mail that U.S. Magistrate Alexander had denied his *Request for Entry of Default* and his *Motion to Strike*. He later learned both of these pleadings had been referred, without notification or his consent, automatically as "discovery motions" to the Magistrate by the clerk of the District Court.

Mr. Kramer moved timely for reconsideration. His *Motion for Reconsideration* and your respondents' *Motion to Dismiss* were heard by District Judge John J. McNaught on September 12, 1983.

On September 13, 1983 Judge McNaught entered a memorandum and order (A-4) in which he stated:

> I find no error in the action of the Magistrate in denying entry of default. Despite Mr. Kramer's contention that inadvertence on the part of an attorney is not good cause for refusal to enter a default, the action of the magistrate was proper.
>
> This action in its entirety must be dismissed. This court has no power to "review" a judgment entered by the Courts of the Commonwealth. Such review is obviously the goal of the plaintiff. His stated objectives: the "declaration of rights" which he seeks and the invalidation of the judgment of the state courts, is not within the power of a federal trial court.

Petitioner appealed to the U.S. Court of Appeals for the First Circuit pursuant to the jurisdictional provisions in 28 U.S.C. §1291.

After briefing on May 23, 1984, the First Circuit, without allowing oral arguments requested by petitioner, entered an order affirming the District Court (A-1). Their opinion, based on *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923), stated: "[t]he nature of the relief sought is plain on the face of [the] complaint. Since a federal court cannot grant that relief dismissal was required." They further stated: "It is clear that the district court ultimately acted on the motion for default and thus the question of the magistrate's authority is moot."

Reasons for Allowing the Writ

A. The Court of Appeals' Opinion in the Case at Bar Is in Conflict With 28 U.S.C. §2201 on Its Face.

The First Circuit affirmed the District Court's dismissal because, in their opinion, the District Court was not empowered to grant the relief demanded in the complaint. The Declaratory Judgment statute, however, 28 U.S.C. §2201 allows a declaration of rights "whether or not further relief is or could be sought." (A-9). The Court stated in *Skelly Oil Co.* v. *Phillips Co.*, 339 U.S. 667, 671 (1949) that "[t]he Declaratory Judgment allowed relief to be given by way of recognizing the plaintiff's right even though no immediate enforcement of it was asked." The *Skelly* Court only required that a federal right be at issue and that the complaint be "unaided by anything alleged in anticipation of avoidances of defenses which it is thought the defendant may interpose." *Id.* at 672.

It is the petitioner's contention that all the counts in his complaint raise substantial and valid constitutional questions that are ripe for review.

B. *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923) Does Not Support the Court of Appeals' Opinion in the Case at Bar.

The *Rooker* Court observed that *"[t]he parties to the bill are the same* as in the litigation in the state court, but with the addition of two defendants whose presence does not need special notice." (emphasis added) *Id.* at 414. This is certainly not the circumstance in the instant action. They also went on to observe that: "It affirmatively appears from the bill that the judgment was rendered in a cause wherein the circuit court [Indiana] had jurisdiction of both the subject matter and the parties; *that a full hearing was had therein; that judgment was responsive to the issues.*" (emphasis added) *Id.* at 415.

That your petitioner has never had a resolution on any issues is clear from his *Statement of the Case, supra.* Indeed, even the First Circuit recognized in *PI Enterprises* v. *Cataldo*, 457 F.2d 1012, 1015 (1st Cir. 1972) that: "the significant question is whether a party had a 'full and fair' opportunity for judicial resolution of the same issues." *Id.* at 1015.

C. The Court of Appeals Erred by Affirming That a District Court Cannot Invalidate a State Court Judgment.

The Court in *Shelley* v. *Kraemer*, 334 U.S. 1, 14 (1947) stated:

> *That the action of state courts and judicial officers in their official capacities* is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court. . . .[T]his Court pointed out that the Amendment makes *void* "State action of every kind" which is inconsistent with the guaranties therein contained and extends to *manifestations of "State authority in the shape of* laws, customs, or *judicial* or executive *proceedings."* (emphasis added) *Id.* at 14.

In *Townsend* v. *Sain*, 372 U.S. 293, 312 (1962) the Court stated that "a federal evidentiary hearing is required unless the state court trier of facts has after a full hearing reliably found the relevant facts." The *Townsend* Court observed that "[i]t is the typical, not the rare, case in which constitutional issues turn upon the resolution of contested factual issues." *Id.* at 312.

Townsend was a case for a federal writ of *habeas corpus* but your petitioner contends that a civil plaintiff alleging willful abridgement of federal rights by state judges, deserves no less consideration that the criminal plaintiff; and, that the Declaratory Judgment statute provides a means to maintain that action.

D. The Court of Appeals Erred by Ruling That the Unauthorized Action of the Magistrate Is Moot.

The Court of Appeals' reasoning that the question of the magistrate's authority is moot because the District Court "ultimately acted on the motion for default" is tantamount to saying "the question of Constitutional protection for a criminal defendant is moot if he is ultimately found to be guilty."

28 U.S.C. §636(b)(1)(A) (A-8) provides that only "a judge may designate a magistrate to hear and determine any pretrial matter pending before the court." And §636(c)(1) and (2) requires the consent of the parties for a magistrate to exercise civil jurisdiction.

The action by the Magistrate caused confusion which should be clarified.

A request for entry of default pursuant to Fed.R.Civ.Proc. Rule 55(a) is an automatic process made, not by motion, but by a request to the clerk. Rule 55 does not have provision to oppose a request for entry of default. Additionally, the magistrate's unauthorized denial of your petitioner's *Motion to Strike* the defendants' untimely *Motion to Dismiss* permitted your respondents to file their responsive pleading *late* without meeting the requirements in Fed.R.Civ.Proc. Rule 6(b)(2); viz., a showing of excusable neglect. The Tenth Circuit stated, in *In re Stone*, 588 F.2d 1316, 1319 (10th Cir. 1978), that the criteria for excusable neglect "comprehends two distinct aspects—justification for relief and a meritorious defense." Thus the final result of the Magistrate's unauthorized action was to foreclose your petitioner's opportunity to present evidence to challenge any merits of your respondents' defenses.

To ignore these irregularities by holding that unauthorized action is "moot" defeats the intent of §636 and the purposes of the Federal Rules of Civil Procedure.

E. THE CONSTITUTIONAL QUESTIONS IN THE CASE AT BAR ARE RIPE FOR REVIEW.

The Supreme Court has repeatedly reaffirmed that for the purposes for a motion to dismiss the material allegations must be taken as admitted. *Jenkins* v. *McKeithen*, 395 U.S. 411, 421-422 (1968). This requirement also holds for a facial attack on the complaint pursuant to Fed.R.Civ.Proc. Rule 12(b)(1). *Mortensen* v. *First Federal Sav. and Loan Ass'n*, 549 F.2d 884, 891 (3rd Cir. 1977) held that, "[T]he court must consider the allegations of the complaint as true."

Petitioner's *Statement of Case at Bar, supra*, when taken as true clearly shows that his due process and equal protection rights were abridged by state judicial officers and he avers that the alleged acts are shocking and repugnant examples of violation of Article VI, para. 2 of the Constitution (A-7) which states, in part:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

State judicial officers are solemnly sworn to uphold this constitutional provision.

Your petitioner's allegations were that state judges did not permit him to appear *pro se* and then they discriminated against him for asserting his right to self representation. The right to self representation was confirmed by the Supreme Court in *Faretta* v. *California*, 422 U.S. 806, 836 (1974).

Petitioner also contends that the Ninth Amendment (A-7) provides for the impartial application of state laws fair on their face. Mass. Gen. Law ch. 12, §11*I*. was enacted by the citizens of the Commonwealth through their Legislature and is therefore a right retained by the people. Said law is broader

in scope than the federal civil rights statutes, inasmuch as suits are actionable against "any person or persons, whether or not acting under color of law." But when it is applied so as to favor one person or class over another, it merely creates the illusion that the Commonwealth operates to protect federal civil rights and it allows favored state officials to skirt the jurisdiction of federal law (as they have done thus far in this case). Under these conditions it is impossible for a person to know his duties, rights, or remedies at law.

The fact that the questions presented herein arose from proceedings that took place in a Family Court of Massachusetts may seem to make them less serious than proceedings that take place in other courts: e.g., criminal courts. But it should be emphasized that family courts are still courts of law that have jurisdiction over the most personal aspects of peoples' lives. And, due process and equal protection are essential for the administration of justice in these matters.

To allow state judges to enter into covert conspiracies to protect and cover up unconstitutional and oppressive practices by other officers of the court and to allow an attorney to prevail on his argument that he has *absolute privilege* against actions for abuse of process can only set precedent and encourage the most loathsome kind of oppression in the lives of decent people.

In *Snyder* v. *Massachusetts*, 291 U.S. 82, 105 (1933), the Court stated:

> The Commonwealth of Massachusetts is free to regulate the procedures of its courts in accordance with its own conception of policy of fairness unless in so doing it offends some principles of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.

Your petitioner contends that manifestation of "fundamental fairness" can only be laid bare for inspection by an impartial trier of facts.

F. Conclusion

Based on the facts of this case and the foregoing arguments and authorities and in the interest of justice for the petitioner, who has placed his personal welfare in jeopardy by daring to challenge the wholesomeness of state judicial officers, it is respectfully submitted that his petition for a writ of certiorari should be allowed.

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Pro se for the Petitioner

APPENDIX A

NOT FOR PUBLICATION

United States Court of Appeals
For the First Circuit

No. 83-1745

MANUEL KRAMER,
PLAINTIFF, APPELLANT,

v.

HON. JOSEPH S. MITCHELL, ET AL.,
DEFENDANTS, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
[HON. JOHN J. MCNAUGHT, *U.S. District Judge*]

Before
CAMPBELL, *Chief Judge*,
COFFIN and BREYER, *Circuit Judges*.

Manuel Kramer on brief, *pro se*.
Francis X. Bellotti, Attorney General, and *William A. Mitchell*, Assistant Attorney General, on brief for appellees.

May 23, 1984

PER CURIAM. This appeal is taken from the district court's dismissal of appellant's complaint. That complaint sought three forms of relief:

1. A declaratory judgment that the dismissal of a prior state lawsuit was "null and void;"
2. A reactivation of that lawsuit in federal court; or,
3. An injunction directing the state court to hear his case on the merits.

All three requested reliefs would have required the district court to invalidate the state court judgment. Such action is barred by the Supreme Court's decision in *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923). Thus the district court was correct in dismissing the complaint. Appellant's general statements to the contrary are without merit. The nature of the relief sought is plain on the face of his complaint. Since a federal court cannot grant that relief dismissal was required.

Appellant's further arguments that the district court should have granted him a default judgment because the denial by a magistrate was unauthorized and because the failure to file a timely response was unjustified are also without merit.

It is clear that the district court ultimately acted on the motion for default and thus the question of the magistrate's authority is moot.

The decision not to enter a judgment of default is a matter of discretion. We can find no basis for holding that the district court abused its discretion in this case, especially where the complaint lacked merit on its face.

The judgment of the district court is affirmed.

United States Court of Appeals
For the First Circuit

No. 83-1745

MANUEL KRAMER,
PLAINTIFF, APPELLANT,

v.

HON. JOSEPH S. MITCHELL, ET AL.,
DEFENDANTS, APPELLEES.

JUDGMENT
ENTERED: MAY 23, 1984

This cause came on to be submitted on briefs on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court,
(s) FRANCIS P. SCIGLIANO
Clerk.

[cc: Messrs. Kramer and Bellotti]

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 82-3515

MANUEL KRAMER,
PLAINTIFF,

v.

HON. JOSEPH S. MITCHELL, ET AL.,
DEFENDANTS.

MEMORANDUM AND ORDER
SEPTEMBER 13, 1983

McNAUGHT, District Judge

This matter came to be heard on motions seeking review of an order entered by Magistrate Alexander denying to plaintiff a request for entry of default and on defendants' motion to dismiss.

Plaintiff appeared *pro se*, and defendants were represented by the Office of the Attorney General for the Commonwealth.

Upon consideration of the matters *de novo*, I find no error in the action of the magistrate in denying entry of default. Despite Mr. Kramer's contention that inadvertence on the part of an attorney is not good cause for refusal to enter a default, the action of the magistrate was proper.

This action in its entirety must be dismissed. This court has no power to "review" a judgment entered by the Courts of the Commonwealth. Such review is obviously the goal of plaintiff. His stated objectives: the "declaration of rights" which he

seeks and the invalidation of the judgment of the State courts, is not within the power of a federal trial court.

(s) JOHN J. MCNAUGHT
JOHN J. MCNAUGHT
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 82-3515

MANUEL KRAMER,
PLAINTIFF,

v.

HON. JOSEPH S. MITCHELL, ET AL.,
DEFENDANTS.

JUDGMENT
SEPTEMBER 14, 1983

McNAUGHT, District Judge

Pursuant to the Memorandum and Order entered September 13, 1983, Judgment is hereby ordered for the defendant.

(s) JOHN J. McNAUGHT
JOHN J. McNAUGHT
United States District Judge

APPENDIX C

CONSTITUTIONAL PROVISIONS

Article VI, para. 2.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

Amendment IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Amendment XIV, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

APPENDIX D

RELEVANT FEDERAL STATUTES

Title 28 U.S.C. § 636

(b)(1) Notwithstanding any provision of law to the contrary—

(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

(c) Notwithstanding any provision of law to the contrary—

(1) Upon the consent of the parties, a full-time United States magistrate or a part-time United States magistrate who serves as a full-time judicial officer may conduct any or all proceedings in a jury or non-jury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves.

(2) If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of their right to consent to the exercise of such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, neither the district judge nor the magistrate shall attempt to per-

suade or induce any party to consent to reference of any civil matter to a magistrate. Rules of court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent.

Title 28 U.S.C.

§ 2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or J146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

APPENDIX E

RELEVANT MASSACHUSETTS STATUTES

Mass. Gen. Laws, ch. 12

§ 11H. Violations of constitutional rights; civil actions by attorney general; venue

Whenever any person or persons, whether or not acting under color of law, interfere by threats, intimidation or coercion, or attempt to interfere by threats, intimidation or coercion, with the exercise or enjoyment by any other person or persons of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, the attorney general may bring a civil action for injunctive or other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the right or rights secured. Said civil action shall be brought in the name of the commonwealth and shall be instituted either in the superior court for the county in which the conduct complained of occurred or in the superior court for the county in which the person or persons whose conduct complained of reside or have their principal place of business.

§ 11*I*. Violations of constitutional rights; civil actions by aggrieved persons; costs and fees

Any person whose exercise or enjoyment of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, has been interfered with, or attempted to be interfered with, as described in section 11H, may institute and prosecute in his own name and on his own behalf a civil action for injunctive and other appropriate equitable relief as provided for in said section, including the award of compensatory money damages. Any aggrieved person or persons who prevail in an action authorized by this section shall be entitled to an award of the costs of the litigation and reasonable attorneys' fees in an amount to be fixed by the court.

84-171

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

MANUEL KRAMER,
Petitioner

vs.

HON. JOSEPH J. MITCHELL, et al.,
Respondents

ON PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Lower Federal Courts erred when they applied the Rooker Doctrine to dismiss a *pro se* action in which he seeks a review of his state court proceeding.

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Petitioner

vs.

HON. JOSEPH J. MITCHELL, et al.,
Respondents

ON PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF CASE

This is an attempt by a pro se plaintiff to relitigate in the federal courts an action decided adversely to him in the state courts. The present case has its origin in a divorce proceeding in the Massachusetts Probate

and Family Court. That action involving Mr. Kramer was presided over by the Honorable Edward Ginsburg. As a result of the Probate action, Mr. Kramer initiated an action in the Massachusetts Superior Court (No. 81-4009) against both Judge Ginsburg and Attorney George P. Field, attorney for his wife in the divorce action.

In the state Superior Court action, Kramer alleged that Judge Ginsburg had interfered with his substantive and procedural due process rights during the divorce proceedings. Judge Ginsburg's Motion to Dismiss was heard and allowed by the Defendant Judge Joseph S. Mitchell.

Kramer appealed the dismissal of the state action to the Massachusetts Appeals Court on November 13, 1981.

The Appeals Court, with the Defendants Hale, Grant and Brown sitting, affirmed the Superior Court dismissal and assessed Kramer double costs.

On September 3, 1982, Kramer filed an Application for Leave to Obtain Further Appellate Review with the Massachusetts Supreme Judicial Court. The application was denied on September 30, 1982. Mr. Kramer failed to petition for a writ of certiorari at that time

Instead, the present action was then commenced in the United States District Court for the District of Massachusetts on November 19, 1982. Kramer went to the Lower Federal Court seeking a declaration that the dismissal by the trial court and subsequent affirmation by the Appellant

Courts of the Commonwealth were null and void. Additionally, Kramer would had the District Court assume the jurisdiction of his state action; or, in the alternative remand his action to the Massachusetts Superior Court for a jury trial on the merits.

He named as defendants not only the Superior Court Judge who dismissed his state court action but also the State Appeals Court panel which disposed of his appeal.

On December 23, 1982, Kramer filed a Request for Entry of Default. The Defendants filed an opposition on December 30, 1982. Magistrate Alexander denied Kramer's Request for Entry of Default on April 12, 1983. A Motion to Reconsider that denial was filed on April 19, 1983.

The Defendants filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) on December 30, 1982.

District Court Judge McNaught heard both the Motion for Reconsideration and the Motion to Dismiss on September 12, 1983. He found no error in the Magistrate's denial of Kramer's Request for Entry of Default. Additionally, he allowed Defendants' Motion To Dismiss. Judgment entered on September 14, 1983.

Kramer filed a Notice of Appeal from that judgment on October 4, 1983. After briefing, the U. S. Court of Appeals for the First Circuit affirmed the decision of the District Court on May 23, 1984. Kramer, who has appeared for himself throughout this judical

odyssey, then filed this Petition for Writ of Certiorari.

REASON WHY THE WRIT SHOULD BE DENIED

As provided in Rule 17 of the Rules of this Court, "[a] review on writ of certiorari is not a matter of right but of judicial discretion, and will be granted only when there are "special and important reasons therefor". The purpose of the Congressional grant of certiorari jurisdiction to this Court is to permit it to select cases "of such gravity and general importance" as to warrant review of the decision below. In Re Woods, 143 U.S. 202, 206 (1892); see also, Hammerstein v. Superior Court, 341 U.S. 491, 492 (1948) ("[w]rits of

certiorari are matters of grace.").
This case involved a straight forward application of the Rooker doctrine and the instant petition therefore does not raise any "special or important" issues that warrant certiorari review.[1/]

The First Circuit Properly Ruled That The District Court Has No Power To Review A State Court Judgment.

The actual basis of this action is reflected in the prayers for relief set-out in the pro se complaint. Kramer initially sought, a declaration that the dismissal of his state court action and the affirmation of that

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1/ Petitioner additionally presents for review the question of error by the district court in denying the entry of default. This was heard de novo by the District Court Judge and clearly within his discretion. Petitioner has alleged no abuse of discretion, therefore respondent has not addressed this issue.

dismissal by the Massachusetts Courts are "null and void". He, additionally, would have had the U.S. District Court assume the jurisdiction of his state civil rights action; or, in the alternative, remand it to the state court for a jury trial on the merits. Essentially, Kramer sought to relitigate his previously adjudicated state claim.

It is axiomatic that where the requested relief in a later filed federal action would invalidate a state court judgment, the federal courts have no jurisdiction to do so. Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923). This case is very similar to Rooker and involves a simple application of the doctrine bearing the name of the case. In Rooker, a losing

party in a state court action sought a bill in equity in the federal court to declare null and void a state court judgment. This Court explicitly held that the federal district court had no jurisdiction to review the state court judgment. Id. at 416. For the past sixty odd years the Rooker doctrine has been consistently followed by this and the lower Federal Courts.[2/] In fact, Rooker has been viewed by the courts as a jurisdictional bar to relitigation. Tany v. New York Supreme Court, 487 F.2d 138, 141 (2d Cir. 1973).

Mr. Kramer's allegations of violation of his civil rights during

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2/ See Rediscovering the Rooker doctrine: Section 1983, Res Judicata and the Federal Courts. 31 Hastings L.J. 1337 (1980).

his state court proceedings are merely a sham to relitigate his original claim. However, a complaint under the Civil Rights Act does not provide the springboard for an unhappy state litigant to raise his federal claims de novo in federal court. P.I. Enterprise, Inc. v. Cataldo, 457 F.2d 1012, 1015 (1st Cir. 1972). The Civil Rights Act was not designed to be used as a substitute for the right to seek review in this Court, a right the petitioner failed to invoke, nor does it authorize litigants to collaterally attack a final judgment of the highest court of a state and relitigate the issues which it decided. Coogan v. Cincinnati Bar Association, 431 F.2d 1209, 1211 (6th Cir. 1970).

CONCLUSION

Because it presents no important, unsettled questions of law and because the lower courts disposed of this action in accordance with well-established precedents, the petitioner's application for a writ of certiorari should be denied.

Respectfully submitted,

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No. 84-171

In the Supreme Court of the United States

OCTOBER TERM, 1984

MANUEL KRAMER,
PETITIONER,

v.

HON. JOSEPH S. MITCHELL et al.,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITIONER'S REPLY BRIEF

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TABLE OF AUTHORITIES

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PETITIONER'S REPLY BRIEF

I. Purpose of Reply Brief

The RESPONDENTS' BRIEF IN OPPOSITION is clearly a devious attempt by the respondents to:

a.) characterize[1] your petitioner as a disgruntled crank in order to discredit his credibility;

[1] Note respondents' reference to "divorce action", *Id.* at 2; "judicial odyssey", *Id.* at 5-6; "merely a sham to relitigate", *Id.* at 10. It is a misstatement of fact that the instant action arose from a divorce action. Mr. Kramer was granted a divorce from his wife on December 14, 1973, on the grounds that she was found to be "cruel and absive". The proceedings in the Middlesex Family Court, which were the roots of the instant action, concerned complaints for modification of an earlier court order.

b.) create a subliminal illusion, by repetitive use of the word "relitigate", *Id.* at 1, 8, 9, and twice at 10, that your petitioner has been given a full and fair opportunity for judicial resolution of his claims; and,

c.) slough off the "gravity and general importance", *Id.* at 6, of allegations of a conspiracy by state judges to deny federally protected rights in order to cover up unconstitutional and oppressive practices by the other officers of the courts of the Commonwealth.

This reply brief is submitted to rebut these arguments.

II. Arguments

A. Petitioner's Claims in Instant Action Remain Uncontroverted.

Case law requires the court to consider only the claims in the Complaint as admitted and true when ruling on a motion to dismiss (see *Petition for Writ of Certiorari*, No. 84-171, at 12). If the state defendants had wished to impeach the veracity of your petitioner's claims they should have answered and denied them pursuant to Fed. R. Civ. Proc., Rule 12(a) of pled counterclaims pursuant to Rule 13 and allowed an impartial trier of facts to determine the truth. The appalling lack of contested facts (including those in petitioner's state civil rights action) that can be presented to this Court for review attests to respondents, wilful intent to suppress and cover up all traces of evidence of their shameful deeds.

Your petitioner contends that any claims by your respondents reflecting on his character or on his intent should be judged by a trier of facts and should not be presented to this Court as unsubstantiated allegations to discredit his credibility.

B. PETITIONER'S CLAIMS HAVE NEVER BEEN LITIGATED.

Although the word "relitigate", used repetitively by your respondents, does not appear in *Black's Law Dictionary, Fifth Edition*, the word "litigate" does, and is defined at 841, in part, as follows:

> To bring into or engage in litigation; the act of carrying on a suit in a law court; a judicial contest; hence, any controversy that must be decided upon *evidence*. To make the subject of a lawsuit; to contest in law; to prosecute or defend by pleadings, *evidence, and debate* in a court. (emphasis added).

The respondents' attempted characterization of the instant action as a sham to "relitigate" should fail since it is most difficult to understand how an action can be "relitigated" if it was never "litigated" in the first place.

C. THE RIGHTS CLAIMED BY PETITIONER ARE BASIC TO UNITED STATES CONSTITUTIONAL GUARANTEES.

Your respondents' argument that "the instant petition therefore does not raise any 'special or important' issues that warrant certiorari review" (RESPONDENTS' BRIEF IN OPPOSITION at 7) should be viewed in light of a background of rights included by the framers in the United States Constitution and the laws made in pursuance thereof. A basic right for which the American Revolution was fought and from which the Constitution evolved is clearly stated in the DECLARATION OF INDEPENDENCE as follows:

> The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.
>
> . . . .

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

. . . .

He has combined with others to subject us to jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended Legislation:

. . . .

For depriving us in many cases, of the benefits of Trial by Jury:

. . . .

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define Tyrant, is unfit to be the ruler of a free people. (emphasis added).

If your respondents can argue that your petitioner's claims are not of such gravity and general importance to warrant review, then they also might argue that the signers of the DECLARATION OF INDEPENDENCE were merely unhappy litigants in King George's Court.

Respectfully submitted,

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